SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 783

ORMAN W. EWING,

Petitioner,

vs.

NATIONAL AIRPORT CORPORATION,

Respondent.

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI ON RECORD IN THE CIRCUIT COURT OF APPEALS.

Comes now petitioner, and moves this Honorable Court to be allowed to present his petition for a Writ of Certiorari on the Record as constituted in the Circuit Court of Appeals for the Fourth Circuit, together with the proceedings in that court, including the opinion and judgment.

Petitioner respectfully shows that the Record below was in accordance with Rule 10 of the Rules of the Circuit Court of Appeals for the Fourth Circuit, reading as follows:

> "1. Unless ordered by the court, it shall not be necessary to print the record on appeal or on a petition for review of or enforcement of an order, except that the appellant or petitioner shall print as a part of the sup-

plement or appendix to his brief, the judgment, decree or order appealed or sought to be reviewed or enforced, together with any opinion or charge of the court, board or commission. If the record is printed, without order of court, the cost of printing shall not be taxed as costs in the case except in cases where for special cause shown the court shall otherwise order."

"(e) An appendix (or supplement to the brief) which, in addition to what is set out in section 1 above, shall contain such parts of the record material to the questions presented as the appellant or petitioner desires the court to read."

Pursuant to the above Rule petitioner docketed below the entire Record in the case, including the stenographic transcript of all the testimony. Likewise petitioner (appellant below) presented the material parts of the testimony as an appendix to petitioner's brief below. Respondent, appellee below, did the same.

Respondent, now, however, refuses to stipulate that this Court may consider the petition for a Writ of Certiorari herein on the Record in the Circuit Court of Appeals, including the proceedings in that court. That Record has already been filed in this Court and includes the entire Record in the Circuit Court of Appeals, including the stenographic transcript of all the testimony, plus the proceedings in that court, including the opinion and the judgment. Petitioner asked respondent, by stipulation, to permit the present Petition for a Writ of Certiorari to be heard upon the basis of the entire Record below being physically filed in this Court, so that this Court might have recourse to it, if necessary, but printing only the proceedings *in* the Circuit Court of Appeals, plus the appendix of appellant and the appendix of appellee below, containing the testimony that both appellant and appellee below considered material.

Unless this Court grants the present Motion it is obvious that Rule 10 in permitting cases to be heard without printing the entire Record, printing only material portions, by way of appendices, is largely useless. A respondent can effectually destroy petitioner's capacity to ask review by Certiorari simply by refusing to stipulate, as in the present instance, and compelling petitioner to print the entire record in the Circuit Court of Appeals. If a respondent has this power it is obvious that there is no use in attempting to abridge the record below by means of appendices. Instead, unless Certiorari is out of the question (and there is no way to tell this when the Record is docketed in the Circuit Court of Appeals), appellant below might as well face in the beginning the necessity of printing the entire record before he undertakes to present his case in the Circuit Court of Appeals. Thus, the appendix method of presenting records in the Circuit Court of Appeals might as well be abandoned.

It would appear, too, that a respondent who refuses to stipulate that this Court may consider Certiorari on the Record below, printing only the appendices and proceedings in the Circuit Court of Appeals, is acting harshly. After all, the respondent has already printed below the important parts of the Record, and if these were good enough to win in the Circuit Court of Appeals it would seem that they would likewise be good enough to present adequately the case in this Court.

Respectfully submitted,

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